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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,934	07/31/2001	Rembert J. Truesdale III	011920-1360	4562

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EXAMINER	
RUDDOCK, ULA CORINNA	
ART UNIT	**PAPER NUMBER**
1771	3

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

. keep in case

Office Action Summary	Application No. 09/918,934	Applicant(s) TRUESDALE, REMBERT J.
	Examiner Ula C Ruddock	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *31 July 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-69* is/are pending in the application.

4a) Of the above claim(s) *38-69* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-37, drawn to a flame resistant fabric, classified in class 442, subclass 302.

II. Claims 38-69, drawn to a method of dyeing a fabric, classified in class 8, subclass 934.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another process, i.e. by maintaining the dye bath for a specific time and temperature.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with David Risley on January 30, 2003, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 38-69 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

6. Claims 13-15, 27-29, and 35-37 are objected to because of the following informalities: While page 11, line 11, defines L* as shade depth, for clarification purposes, the Examiner suggests amending the claim to read on shade depth.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gadoury (US 6,200,535) in view of Luckenbach (US 4,803,256) or Wessely (US 4,452,607). Gadoury discloses dyeing of melamine fiber-containing textile articles. The textile article may be formed entirely of melamine fibers or may be in form of a blend of melamine fiber with at least one other type of fiber,

e.g. aramid fibers (abstract). Blends of about 30/70% to about 50%/50%, melamine fiber to aramid fiber are preferred (col 2, ln 24-27). The textile articles are in the form of woven fabrics (col 2, ln 35). Example 1A specifies that the weight of the fabric can be 8.5 oz/yd^2 (col 4, ln 42). Gadoury fails to disclose that the fabric is beam dyed and that the fabric has a weight of approximately 7.5 oz/yd^2 (claims 11, 25, and 33) and that the fabric has a trapezoidal tear strength of at least approximately 30 lbf in the warp direction and at least approximately 25 lbf in the filling direction (claims 12, 26, and 34). Gadoury also fails to disclose that the fabric has an L* value no greater than approximately 60, no greater than approximately 35, or no greater than approximately 25 (claims 13-15, 27-29, and 35-37).

Luckenbach (US 4,803,256) disclose beam-dyeing (col 4, ln 3) any fiber (col 1, ln 26-36 and col 5, ln 14-20) and Wessely (US 4,452,607) disclose dyeing fabrics (abstract) by a beam-dyeing method (col 1, ln 61-65) because it is a more economical process. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the beam-dyeing methods of Luckenbach or Wessely on the fabric of Gadoury, motivated by the desire to obtain a dyeing method having cheaper processing costs.

With regard to claims 11, 12, 25, 26, 33, and 34, it has been held that increasing the fabric weight or trapezoidal tear strength in either the warp or filling direction are result effective variables. For example, the greater the fabric weight or trapezoidal tear strength directly affect the strength and durability of the fabric. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a fabric having a weight approximately 7.5 oz/yd^2 claims and a fabric having a trapezoidal tear strength of at least approximately 30 lbf in the

warp direction and at least approximately 25 lbf in the filling direction 34), since it has been *held* that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the fabric weight and trapezoidal strength motivated by the desire to obtain a fabric with increased strength and durability.

Although Gadoury, Luckenbach, and Wessley do not explicitly teach the claimed L* values, it is reasonable to presume that the L* is inherent to the fabric of Gadoury, Luckenbach, and Wessley. Support for said presumption is found in the use of like materials (i.e. melamine and p-aramid woven fabrics) and the use of like processes (i.e. beam-dyeing). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of L* values no greater than approximately 60, no greater than approximately 35, or no greater than approximately 25, would obviously have been present once the Gadoury, Luckenbach, and Wessley product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is (703) 305-0066. The Examiner can normally be reached Monday through Thursday from 6:30 AM to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor Terrel Morris can be reached at (703) 308-2414.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-2351.

Ula C. Ruddock UCR
Patent Examiner
Art Unit 1771
2/24/03

Ula Ruddock